

No. 83-547

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1983

OHIO-SEALY MATTRESS MANUFACTURING COMPANY, et al.,

Petitioners,

v.

SEALY, INCORPORATED,

Respondent.

On Petition For a Writ of Certiorari  
To The United States Court of Appeals  
For The Seventh Circuit

MEMORANDUM OF RESPONDENT IN OPPOSITION  
TO PETITIONER'S MOTION TO DEFER

Petitioner has filed a motion to defer consideration of the petition in this case until briefing is completed on another petition just filed by petitioner (Ohio-Sealy Mattress Mfg. Co. v. Sealy, Incorporated, No. \_\_\_\_\_, filed November 8, 1983).

Respondent opposes the motion and respectfully suggests that no purpose would be served by such delay except to extend still further the long and tortuous course of litigation by which petitioner has avoided for some seven years the payment of royalties due respondent and which two courts below have determined should be paid.

The two petitions are from two distinct judgments of the Court of Appeals entered in two different actions. The issues are unrelated except that both grow out of arbitration demands made by petitioner during the course of private antitrust actions. This case, No. 83-547, involves in part the correctness of a decision below finding that arbitration had been waived. The second, No. \_\_\_\_\_, involves the correctness of a decision of the court of appeals holding that it had no appellate jurisdiction of an interlocutory appeal from a ruling postponing arbitration pending determination of antitrust issues.

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Were this Court to grant certiorari in both cases it would no doubt find it convenient to consolidate the cases for oral argument. However, to delay ruling on one petition merely because of the filing of a petition in a different action would only encourage the filing of petitions for purposes of delay.

Respectfully submitted,

*Phil C. Neal*

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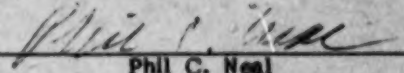
Phil C. Neal

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Attorney for Respondent

**CERTIFICATE OF SERVICE**

Phil C. Neal states that he served a copy of the foregoing Memorandum of Respondent in Opposition to Petitioner's Motion to Defer upon Frederic F. Brace, Jr., Esq., Brace & O'Donnell, 332 South Michigan Ave., Suite 1858, Chicago, Illinois 60604 by causing a copy of same to be delivered to him on November 9, 1983.



Phil C. Neal